IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Chapter VIII, Rule 32 (2) (b)
Description of case

Writ Petition No.657 (M/B) 2001
Writ Petition 168 (M/B) 2002

Dated of decision – 15-09-2003

For the approval of:-

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Rajesh Tandon, J.

- Whether the order/judgment should be sent to the reporters for reporting?

-Whether the reporters be allowed to see the judgment?

(N.C.Melkani)
P.s.

C.J's Court.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.657(M/B) 2001

Kharak Singh Bohra Advocate,]
S/o Sri Bhawan Singh Bohra,]
R/o Vilage Sukha, Tehsil Betal Ghat,]
District- Nainital.]----------Petitioner

Vs.

1. Uttar Pradesh Matsya Vikas Nigam Ltd.]
   4/13-14, Vivek Khand, Gomti Nagar,]
   Lucknow.]
2. State of Uttaranchal, through]
   Chief Secretary, Uttaranchal Shasan,]
   Dehradun.]
3. Deputy Director, Matsya Vibhag,]
   Uttaranchal, Dehradun.]--------Respondents

Mr. B.C. Pandey Advocate for the petitioner.]
Mr. Akhilesh Kalra Advocate for respondent No.1,]
Mr. B.S. Verma S.C. (U.P.) for the State of U.P…]

AND

Writ Petition No.168(M/B) 2002

State of Uttaranchal through,]
Secretary, Fisheries,]
State of Uttaranchal, Dehradun.]----------Petitioner

Vs.

1. Uttar Pradesh Matsya Vikas Nigam Ltd.]
   4/13-14, Vivek Khand, Gomti Nagar,]
   Lucknow.]
2. State of Uttaranchal, through]
   its Secretary, Fisheries,]
   State of U.P. Lucknow]
3. Managing Director, U.P. Matsya Vikas]
   Nigam Ltd. State of U.P. Lucknow.]--------Respondents

Mr. Sudhanshu Dhulia Addl. Govt. Advocate.]
& Sri N.B. Tewari C.S.C. for the petitioner.]
Mr. Akhilesh Kalra Advocate]
& Mr B.S. Verma S.C. (U.P.) for respondents]

Coram: **Hon'ble S.H. Kapadia, C.J.,**
Hon'ble Rajesh Tandon, J.

Date: 15.09.2003:

ORAI JUDGMENT[Per Hon. Chief Justice]

Both the above writ petitions raise common question of law and facts, therefore, they are jointly decided.

FACTS

State of Uttaranchal came into existence on 9th November 2000. Five, out of six reservoirs fall within the State of Uttaranchal they are: Nanak Sagar reservoir, Begul reservoir, Dhaura reservoir, Baur reservoir, Tumaria Reservoir. There is one more reservoir namely, Shardh Sagar, part of which falls in State of Uttaranchal and part within the State of U.P. on 11th April 2002 auction notice was issued by Chief General Manager, Uttar Pradesh Matsya Vikas Nigam Limited. The auction notice was published in 'Dainik Jagran'. U.P. Matsya Vikas Nigam Limited fixed the date of auction on 26th April 2002 in respect of Tumaria reservoir situated within the territory of the State of Uttaranchal. The auction was in respect of fishery rights. The auction was for the period 1st July 2002 upto 30th June 2005. State of Uttaranchal has challenged the auction notice. There are several rivers in the State of Uttaranchal. These rivers are covered by reservoirs. They are small rivers. The rivers do not flow into the Ganga. The entire water of these small rivers is collected in the reservoirs in the State of Uttaranchal. After construction of these reservoirs, several canals were constructed, for irrigation, for the farmers. The dispute is regarding auction of fisheries rights from the above reservoirs. The auction is related to catching of fishes in lakes and reservoirs. Till date, auction is conducted by U.P. Matsya Vikas Nigam Limited. It is an agency of the State of U.P. It has exclusive right to catch the fishes from the reservoirs. On 7th November 2000, Union of India had issued a notification under which it was stipulated that till the Ganga Management Board is created under Section 80 of U.P. Reorganisation Act, 2000, the existing arrangement with regard to supply of water to the State of U.P. and Uttaranchal should not be disturbed. Accordingly, certain directions were given by the said

notification to both the States. The directions were given under Section 64 of U.P. Reorganisation Act, 2000. One of the direction was to the effect that the existing arrangement regarding administration, construction, maintenance and operation of Dams, Barrages and reservoirs vis-à-vis supply of water to the State concerned shall be continued till the constitution of Ganga Management Board or till further directions to be issued by Govt. of India. Prior to this notification there was a Government Order issued by State of U.P. That G.O. was dated 12th August 1983. By the G.O., U.P. Matsya Vikas Nigam Limited was given the right to manage the above reservoirs on payment of royalty.

We may point out that during the pendency of the dispute, the realised amount in the auction of fisheries rights is deposited by the Corporation in the Nationalised Bank the orders of the Apex Court.

ARGUMENTS

Mr. Dhulia, learned Addl. Govt. Advocate for the State of Uttaranchal submitted that under Article 294 (a) of the Constitution, all the above reservoirs constitute property and assets of State of Uttaranchal. He invited our attention to the State List in Schedule-VII of the Constitution. He invited our attention to item 17,18 and 21 of the State List in the VII Schedule of the Constitution and he submitted that water, land, reservoirs and fishery fall in the State List. He contended further that till today Ganga Management Board has not been constituted under Section 80 of U.P. Reorganisation Act, 2000. He contended that the notification issued by Union of India was under Section 64 of Uttar Pradesh Reorganisation Act, 2000. However, Section 64 did not contemplate fishery rights. He contended that Section 64 contemplate continuance of existing arrangement in regard to generate and supply of electric power. He contended that Section 64 of U.P. Reorganisation Act, 2000 contemplate continuance of water supply to the State of U.P. from the rivers within the State of Uttaranchal. He contended that the notification issued by the Central

Government, therefore, had no application to the facts of this case. He also invited our attention to the M.O.U. (Management of Understanding) dated 25th June 2003 signed by U.P. Matsya Vikas Nigam Limited and the State of Uttaranchal under which U.P. Matsya Vikas Nigam Limited acknowledged, that five out of six reservoirs belong to the State of Uttaranchal and that amount realised from the auction of fishery rights in respect of five, out of six reservoirs should go to State of Uttaranchal and that amount realised from auction of fishery rights in respect of Sharda Sagar reservoir should be shared on pro-rata-basis. He pointed out that the M.O.U. was signed on 25th June 2003 but when the Executive Officer of U.P. Matsya Vikas Nigam Limited went back to Lucknow, the Corporation resiled from Memorandum of Understanding on 26th June 2003.

Mr. Akhilesh Kalra, learned counsel appearing on behalf of U.P. Matsya Vikas Nigam Limited contended by way of preliminary objection that the dispute was in respect of sharing of water. He contended that in the circumstances, Article 131 of the Constitution was applicable. He contended that the dispute falls under Article 131 of the Constitution and, therefore, only the Supreme Court of India had original jurisdiction to entertain and try such disputes. He next contended that in view of the notification issued by Union of India dated 7th November 2000, U.P. Matsya Vikas Nigam Limited had exclusive right under the existing arrangement in regard to administration, construction, maintenance and operation of Dams, Barrages and reservoirs till the constitution of Ganga Management Board. He further pointed out that from 12th August 1983, the fishery rights ware managed by U.P. Matsya Vikas Nigam Limited under G.O. issued by U.P. Government and that arrangement had continued even after 9th November 2000. He pointed out that the notification dated 7th November 2000 refers of the existing arrangement pending constitution of the Ganga Management Board. He, therefore, submitted that the G.O. dated 12 August 1983 read with notification dated 7th November 2000 covers the dispute in question. He submitted

that under the notification dated 7th November 2000, the Central Government has directed both the States to maintain status-quo and to continue the existing arrangement regarding administration, construction, maintenance, operation of Dams and reservoirs. He, therefore, submitted that U.P. Matsya Vikas Nigam Limited should be permitted to conduct the auction of the fishery rights.

FINDINGS

We find merit in the petition filed by the State of Uttaranchal. As stated above, there are several small rivers in the State of Uttaranchal on which several reservoirs have been constructed in which the entire water of the small rivers is collected within the territory of the State of Uttaranchal. Several canals have also been constructed for the purposes of irrigation. Since, large number of rivers flow from State of Uttaranchal and go towards the State of U.P., the Government of India issued the notification dated 7th November 2000 so that one State should not stop the flow of water from the rivers into the other State. It is, for that purpose, that Govt. of India has issued the notification. Dams, Barrages and Reservoirs block the flow of rivers from one State into the other. In order to prevent that situation, Govt. of India has issued notification dated 7th November 2000. Therefore, the notification dated 7th November 2000 does not deal with fishery rights. The notification issued by the Govt. of India is under Section 64 of U.P. Reorganisation Act, 2000. Section 64 also refers to continuance of arrangement between the two States regarding generation and supply of electric power and supply of water. In this case, we are not concerned with river dispute. In this case, we are not concerned with river disputes over water supply. In this case, we are concerned with fishery rights over the reservoirs falling in the State of Uttaranchal, therefore, Section 64 of U.P. Reorganisation Act, 2000 has no application. With the coming into existence of the State of Uttaranchal, fishery rights constitute property and assets of this State. Under Section 43 of U.P. Reorganisation Act, 2000 all the lands falling within the transferred territory shall pass to the State of

Uttaranchal. The expression 'transferred territory' has been defined under Section 2 (k) of U.P. Reorganisation Act, 2000 to mean the territory, which is transferred from the State of U.P. to State of Uttaranchal. Five, out of six abovementioned reservoirs fall within the State of Uttaranchal. These reservoirs constitute property and assets of the State of Uttaranchal. Fishery rights in the reservoirs constitute proprietary rights in the reservoirs. These proprietary rights have vested in the State of Uttaranchal. In the circumstances, following order is passed:-

ORDER

(a) We hereby declare that the right to catch the fish from the above reservoirs namely, Nanak Sagar reservoir, Begul reservoir, Dhaura reservoir, Baur reservoir and Tumaria reservoir exclusively belong to the State of Uttaranchal whereas the fishery rights in case of Sharda Sagar reservoir jointly belong to the State of U.P. and State of Uttaranchal to the extent of the area falling in the respective States.

(b) That U.P. Matsya Vikas Nigam Limited has no right of holding auction of the fishery rights in the above reservoirs.

(c) That State of Uttaranchal and/or its corporation alone shall have the right to hold auction in respect of fishery rights for reservoirs for five, out of six reservoirs namely, Nanak Sagar reservoir, Begul reservoir, Dhaura reservoir, Baur reservoir and Tumaria reservoir. However, in respect of Sharda Sagar reservoir, there can be auction of fishery rights to be carried out jointly and the proceeds thereof have got to be shared proportionately between the two States depending on the area of the reservoir falling in the respective States. In respect of this sharing of the proceeds, the two States shall sit together and decide their respective proportionate share.

Accordingly, the writ petitions are disposed of. No order as to costs.

(Rajesh Tandon,J.) **(S.H. Kapadia, C.J.)**

Melkani: